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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION

16 TEKION CORP.,
17 Plaintiff,
18 v.

19 CDK GLOBAL, LLC,
20 Defendant.

Case No.: 3:24-cv-08879-JSC

21 CDK GLOBAL, LLC,
22 Plaintiff,
23 v.

24 TEKION CORP.,
25 Defendant.

Case No.: 3:25-cv-1394-JSC

**[PROPOSED] STIPULATED
PROTECTIVE ORDER**

Judge: Honorable Jacqueline Scott Corley

1 **1. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery activity in this action are likely to involve production of
 3 confidential, proprietary, or private information for which special protection from public
 4 disclosure and from use for any purpose other than prosecuting this litigation may be warranted.
 5 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated
 6 Protective Order. The parties acknowledge that this Order does not confer blanket protections on
 7 all disclosures or responses to discovery and that the protection it affords from public disclosure
 8 and use extends only to the limited information or items that are entitled to confidential treatment
 9 under the applicable legal principles. The parties further acknowledge, as set forth in Section 13.3,
 10 below, that this Stipulated Protective Order does not entitle them to file confidential information
 11 under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards
 12 that will be applied when a party seeks permission from the court to file material under seal.

13 **2. DEFINITIONS**

14 2.1 Challenging Party: a Party or Non-Party that challenges the designation of
 15 information or items under this Order.

16 2.2 CONFIDENTIAL Information or Items: information (regardless of how it is
 17 generated, stored or maintained) or tangible things that qualify for protection under Federal Rule
 18 of Civil Procedure 26(c).

19 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as
 20 well as their support staff).

21 2.4 Designating Party: a Party or Non-Party that designates information or items that it
 22 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY
 23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
 24 CODE.”

25 2.5 Disclosure or Discovery Material: all items or information, regardless of the
 26 medium or manner in which it is generated, stored, or maintained (including, among other things,
 27 testimony, transcripts, and tangible things), that are produced or generated in disclosures or
 28 responses to discovery in this matter.

1 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
2 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
3 consultant in this action.

4 2.7 HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY Information or Items:
5 extremely sensitive “Confidential Information or Items,” disclosure of which to another Party or
6 Non-Party would create a substantial risk of serious harm that could not be avoided by less
7 restrictive means.

8 2.8 HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items: extremely
9 sensitive “Confidential Information or Items” representing computer code and associated
10 comments and revision histories, formulas, engineering specifications, or schematics that define
11 or otherwise describe in detail the algorithms or structure of software or hardware designs,
12 disclosure of which to another Party or Non-Party would create a substantial risk of serious harm
13 that could not be avoided by less restrictive means.

14 2.9 House Counsel: attorneys who are employees of a party to this action. House
15 Counsel does not include Outside Counsel of Record or any other outside counsel.

16 2.10 Non-Party: any natural person, partnership, corporation, association, or other legal
17 entity not named as a Party to this action.

18 2.11 Outside Counsel of Record: attorneys who are not employees of a party to this
19 action but are retained to represent or advise a party to this action and have appeared in this action
20 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

21 2.12 Party: any party to this action, including all of its officers, directors, employees,
22 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

23 2.13 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
24 Material in this action.

25 2.14 Professional Vendors: persons or entities that provide litigation support services
26 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
27 organizing, storing, or retrieving data in any form or medium) and their employees and
28 subcontractors.

2.15 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

2.16 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

3. SCOPE

The protections conferred by this Stipulation and Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material. However, the protections conferred by this Stipulation and Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including becoming part of the public record through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by a separate agreement or order.

4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Order must take care

1 to limit any such designation to specific material that qualifies under the appropriate standards.
2 To the extent it is practical to do so, the Designating Party must designate for protection only those
3 parts of material, documents, items, or oral or written communications that qualify – so that other
4 portions of the material, documents, items, or communications for which protection is not
5 warranted are not swept unjustifiably within the ambit of this Order.

6 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
7 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
8 unnecessarily encumber or retard the case development process or to impose unnecessary expenses
9 and burdens on other parties) expose the Designating Party to sanctions.

10 If it comes to a Designating Party's attention that information or items that it designated
11 for protection do not qualify for protection, that Designating Party must promptly notify all other
12 parties that it is withdrawing the mistaken designation.

13 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
14 (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise stipulated or ordered,
15 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
16 designated before the material is disclosed or produced.

17 Designation in conformity with this Order requires:

18 (a) for information in documentary form (e.g., paper or electronic documents, but
19 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party
20 affix the legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
21 ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE" to each page that contains protected
22 material. If only a portion or portions of the material on a page qualifies for protection, the
23 Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate
24 markings in the margins) and must specify, for each portion, the level of protection being asserted.
25 Where electronic files and documents are produced in native electronic format, such electronic
26 files and documents shall be designated for protection under this Order by appending the word
27 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" to the file
28 names.

1 A Party or Non-Party that makes original documents or materials available for inspection
 2 need not designate them for protection until after the inspecting Party has indicated which material
 3 it would like copied and produced. During the inspection and before the designation, all of the
 4 material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL –
 5 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants
 6 copied and produced, the Producing Party must determine which documents, or portions thereof,
 7 qualify for protection under this Order. Then, before producing the specified documents, the
 8 Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY
 9 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
 10 CODE”) to each page that contains Protected Material. If only a portion or portions of the material
 11 on a page qualifies for protection, the Producing Party also must clearly identify the protected
 12 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
 13 portion, the level of protection being asserted.

14 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
 15 Designating Party identify all protected testimony and specify the level of protection being
 16 asserted. A Designating Party has a right to have up to 21 days after receipt of a final deposition
 17 transcript to identify the specific portions of the testimony as to which protection is sought and to
 18 specify the level of protection being asserted. Only those portions of the testimony that are
 19 appropriately designated for protection within the 21 days shall be covered by the provisions of
 20 this Stipulated Protective Order. Alternatively, a Designating Party may specify, at the deposition,
 21 or up to 21 days after the deposition, that the entire transcript shall be treated as
 22 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

23 Parties shall give the other parties notice if they reasonably expect a deposition, hearing
 24 or other proceeding to include Protected Material so that the other parties can ensure that only
 25 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”
 26 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition
 27 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
 28 – ATTORNEYS’ EYES ONLY.”

1 Transcripts containing Protected Material shall have an obvious legend on the title page
 2 that the transcript contains Protected Material and the title page shall be followed by a list of all
 3 pages (including line numbers as appropriate) that have been designated as Protected Material and
 4 the level of protection being asserted by the Designating Party. The Designating Party shall inform
 5 the court reporter of these requirements. Any transcript that is prepared before the expiration of a
 6 21-day period for designation shall be treated during that period as if it had been designated
 7 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless otherwise
 8 agreed. After the expiration of that period, the transcript shall be treated only as actually
 9 designated.

10 (c) for information produced in some form other than documentary and for any other
 11 tangible items, that the Producing Party affix in a prominent place on the exterior of the container
 12 or containers in which the information or item is stored the legend “CONFIDENTIAL” or
 13 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL
 14 – SOURCE CODE”. If only a portion or portions of the information or item warrant protection,
 15 the Producing Party, to the extent practicable, shall identify the protected portion(s) and specify
 16 the level of protection being asserted.

17 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
 18 designate qualified information or items does not, standing alone, waive the Designating Party’s
 19 right to secure protection under this Order for such material. Upon timely correction of a
 20 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
 21 in accordance with the provisions of this Order.

22 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

23 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
 24 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
 25 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
 26 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
 27 challenge a confidentiality designation by electing not to mount a challenge promptly after the
 28 original designation is disclosed. Any challenge must be made in good faith.

1 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
2 process by providing written notice of each designation it is challenging and describing the basis
3 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
4 notice must recite that the challenge to confidentiality is being made in accordance with this
5 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in
6 good faith and must begin the process by conferring directly (in voice to voice dialogue; other
7 forms of communication are not sufficient) within 14 days of the date of service of notice. In
8 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
9 designation was not proper and must give the Designating Party an opportunity to review the
10 designated material, to reconsider the circumstances, and, if no change in designation is offered,
11 to explain the basis for the chosen designation. A Challenging Party may proceed to the next stage
12 of the challenge process only if it has engaged in this meet and confer process first or establishes
13 that the Designating Party is unwilling to participate in the meet and confer process in a timely
14 manner.

15 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
16 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
17 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days
18 of the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer
19 process will not resolve their dispute, whichever is earlier. Each such motion must be accompanied
20 by a competent declaration affirming that the movant has complied with the meet and confer
21 requirements imposed in the preceding paragraph. Failure by the Designating Party to make such
22 a motion including the required declaration within 21 days (or 14 days, if applicable) shall
23 automatically waive the confidentiality designation for each challenged designation. In addition,
24 the Challenging Party may file a motion challenging a confidentiality designation at any time if
25 there is good cause for doing so, including a challenge to the designation of a deposition transcript
26 or any portions thereof. Any motion brought pursuant to this provision must be accompanied by
27 a competent declaration affirming that the movant has complied with the meet and confer
28 requirements imposed by the preceding paragraph.

1 The burden of persuasion in any such challenge proceeding shall be on the Designating
 2 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
 3 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
 4 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to
 5 file a motion to retain confidentiality as described above, all parties shall continue to afford the
 6 material in question the level of protection to which it is entitled under the Producing Party's
 7 designation until the court rules on the challenge.

8 **7. ACCESS TO AND USE OF PROTECTED MATERIAL**

9 7.1 Basic Principles. The Court has granted the Parties' administrative motion relating
 10 *Tekion Corp. v. CDK Global, LLC* (3:24-cv-08879-JSC) to *CDK Global, LLC v. Tekion Corp.*
 11 (3:25-cv-1394-JSC). Accordingly, the Parties agree that to the extent discovery in cases that have
 12 been consolidated by the Court involve different documents or materials, documents produced in
 13 one related case may be used in the other related case or cases and vice versa. For the avoidance
 14 of doubt, this discovery sharing provision includes written responses to written discovery requests,
 15 including Interrogatories and Requests for Admission. A Receiving Party may use Protected
 16 Material that is disclosed or produced by another Party or by a Non-Party in connection with this
 17 case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material
 18 may be disclosed only to the categories of persons and under the conditions described in this Order.
 19 When the litigation in either *Tekion Corp. v. CDK Global, LLC* (3:24-cv-08879-JSC) or *CDK*
 20 *Global, LLC v. Tekion Corp.* (3:25-cv-1394-JSC) has been terminated, a Receiving Party must
 21 comply with the provisions of Section 14 below (FINAL DISPOSITION).

22 To the extent this section is in conflict with any other section of this Order that could be
 23 interpreted as limiting the use and disclosure of documents, responses to interrogatories, and
 24 responses to requests for admission to this litigation only, those sections should be interpreted as
 25 allowing the Parties to use and disclose documents, responses to interrogatories, and responses to
 26 requests for admission in accordance with this section.

27 Protected Material must be stored and maintained by a Receiving Party at a location and in
 28 a secure manner that ensures that access is limited to the persons authorized under this Order.

1 7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered
 2 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
 3 information or item designated “CONFIDENTIAL” only to:

4 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as
 5 employees and agents of said Outside Counsel of Record to whom it is reasonably necessary to
 6 disclose the information for this litigation;

7 (b) the officers, directors, and employees (including House Counsel) of the Receiving
 8 Party to whom disclosure is reasonably necessary for this litigation and who have signed the
 9 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

10 (c) the Receiving Party himself or herself (if a natural person) to whom disclosure is
 11 reasonably necessary for this litigation and who have signed the “Acknowledgment and
 12 Agreement to Be Bound” (Exhibit A);

13 (d) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
 14 reasonably necessary for this litigation and who have signed the “Acknowledgment and
 15 Agreement to Be Bound” (Exhibit A);

16 (e) the court and its personnel;

17 (f) court reporters and their staff, professional jury or trial consultants, mock jurors,
 18 and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who
 19 have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

20 (g) during their depositions, witnesses in the action to whom disclosure is reasonably
 21 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
 22 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed
 23 deposition testimony or exhibits to depositions that reveal Protected Material may not be disclosed
 24 to anyone except as permitted under this Stipulated Protective Order.

25 (h) the author or recipient of a document containing the information or a custodian or
 26 other person who otherwise possessed or knew the information.

27 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and
 28 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items. Unless otherwise

1 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may
 2 disclose any information or item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
 3 EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” only to:

4 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees
 5 and agents of said Outside Counsel of Record to whom it is reasonably necessary to disclose the
 6 information for this litigation;

7 (b) House Counsel of the Receiving Party to whom disclosure is reasonably necessary for
 8 this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit
 9 A);

10 (c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this
 11 litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
 12 and (3) as to whom the procedures set forth in Section 7.4, below, have been followed;

13 (d) the court and its personnel;

14 (e) court reporters and their staff, professional jury or trial consultants, and Professional
 15 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the
 16 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

17 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
 18 necessary and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A),
 19 unless otherwise agreed by the Designating Party or ordered by the court. Pages of transcribed
 20 deposition testimony or exhibits to depositions that reveal Protected Material may not be disclosed
 21 to anyone except as permitted under this Stipulated Protective Order; and

22 (g) the author or recipient of a document containing the information, an employee of the
 23 Producing Party, or a custodian or other person who otherwise possessed or knew the information.

24 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY
 25 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE
 26 CODE” Information or Items to Experts.

27 (a) Unless otherwise ordered by the court or agreed to in writing by the Designating Party,
 28 a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that

1 has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
2 CONFIDENTIAL – SOURCE CODE” pursuant to Section 7.3(c) first must make a written request
3 to the Designating Party that (1) seeks permission to disclose “HIGHLY CONFIDENTIAL –
4 ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE” information
5 to the Expert, (2) sets forth the full name of the Expert and the city and state of his or her primary
6 residence, (3) attaches a copy of the Expert’s current resume, (4) identifies the Expert’s current
7 employer(s), (5) identifies each person or entity from whom the Expert has received compensation
8 or funding for work in his or her areas of expertise or to whom the expert has provided professional
9 services, including in connection with a litigation, at any time during the preceding five years, and
10 (6) identifies (by name and number of the case, filing date, and location of court) any litigation in
11 connection with which the Expert has offered expert testimony, including through a declaration,
12 report, or testimony at a deposition or trial, during the preceding five years.

13 (b) A Party that makes a request and provides the information specified in the preceding
14 respective paragraphs may disclose the subject Protected Material to the identified Expert unless,
15 within 14 days of delivering the request, the Party receives a written objection from the
16 Designating Party. Any such objection must set forth in detail the grounds on which it is based.

17 (c) A Party that receives a timely written objection must meet and confer with the
18 Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement
19 within seven days of the written objection. If no agreement is reached, the Party seeking to make
20 the disclosure to the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance
21 with Civil Local Rule 79-5, if applicable) seeking permission from the court to do so. Any such
22 motion must describe the circumstances with specificity, set forth in detail the reasons why the
23 disclosure to the Expert is reasonably necessary, assess the risk of harm that the disclosure would
24 entail, and suggest any additional means that could be used to reduce that risk. In addition, any
25 such motion must be accompanied by a competent declaration describing the parties’ efforts to
26 resolve the matter by agreement (i.e., the extent and the content of the meet and confer discussions)
27 and setting forth the reasons advanced by the Designating Party for its refusal to approve the
28 disclosure.

1 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden
2 of proving that the risk of harm that the disclosure would entail (under the safeguards proposed)
3 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

4 **8. SOURCE CODE**

5 (a) To the extent production of source code becomes necessary in this case, a
6 Producing Party may designate source code as "HIGHLY CONFIDENTIAL - SOURCE CODE"
7 if it comprises or includes confidential, proprietary or trade secret source code.

8 (b) Protected Material designated as "HIGHLY CONFIDENTIAL – SOURCE CODE"
9 shall be subject to all of the protections afforded to "HIGHLY CONFIDENTIAL – ATTORNEYS'
10 EYES ONLY" information, and may be disclosed only to the individuals to whom "HIGHLY
11 CONFIDENTIAL – ATTORNEYS' EYES ONLY" information may be disclosed, as set forth in
12 Paragraphs 7.3 and 7.4.

13 (c) Any source code produced in discovery shall be made available for inspection, in a
14 format allowing it to be reasonably reviewed and searched during normal business hours or other
15 mutually agreeable times at a location that is reasonably convenient for the Receiving Party and
16 any experts to whom the source code may be disclosed.¹ The source code shall be made available
17 for inspection on a secured computer in a secured room without Internet access or network access
18 to other computers, and the Receiving Party shall not copy, remove, or otherwise transfer any
19 portion of the source code onto any recordable media or recordable device. The Producing Party
20 may visually monitor the activities of the Receiving Party's representatives during any source
21 code review, but only to ensure that there is no unauthorized recording, copying, or transmission
22 of the source code.

23 (d) The Receiving Party may request paper copies of limited portions of source code
24 that are reasonably necessary for the preparation of court filings, pleadings, expert reports, or
25 other papers, or for deposition or trial, but shall not request paper copies for the purposes of
26 reviewing the source code other than electronically as set forth in paragraph (c) in the first
27 instance. The Producing Party shall provide all such source code in paper form including bates
28

1 numbers and the label “HIGHLY CONFIDENTIAL - SOURCE CODE.” The Producing Party
 2 may challenge the amount of source code requested in hard copy form pursuant to the dispute
 3 resolution procedure and timeframes set forth in Paragraph 6 whereby the Producing Party is the
 4 “Challenging Party” and the Receiving Party is the “Designating Party” for purposes of dispute
 5 resolution.

6 (e) The Receiving Party shall maintain a record of any individual who has inspected
 7 any portion of the source code in electronic or paper form. The Receiving Party shall maintain all
 8 paper copies of any printed portions of the source code in a secured, locked area. The Receiving
 9 Party shall not create any electronic or other images of the paper copies and shall not convert any
 10 of the information contained in the paper copies into any electronic format. The Receiving Party
 11 shall only make additional paper copies if such additional copies are (1) necessary to prepare court
 12 filings, pleadings, or other papers (including a testifying expert’s expert report), (2) necessary for
 13 deposition, or (3) otherwise necessary for the preparation of its case. Any paper copies used during
 14 a deposition shall be retrieved by the Producing Party at the end of each day and must not be given
 15 to or left with a court reporter or any other unauthorized individual.

16 (f) The Receiving Party must provide notice to the Producing Party before including
 17 “HIGHLY CONFIDENTIAL – SOURCE CODE” information in a court filing, pleading, or expert
 18 report.

19 **9. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN**
 20 **OTHER LITIGATION**

21 If a Party is served with a subpoena or a court order issued in other litigation that compels
 22 disclosure of any information or items designated in this action as “CONFIDENTIAL” or
 23 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL
 24 – SOURCE CODE” that Party must:

25 (a) promptly notify in writing the Designating Party. Such notification shall include a
 26 copy of the subpoena or court order;

27 (b) promptly notify in writing the party who caused the subpoena or order to issue in
 28 the other litigation that some or all of the material covered by the subpoena or order is subject to

1 this Protective Order. Such notification shall include a copy of this Stipulated Protective Order;
2 and

3 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
4 Designating Party whose Protected Material may be affected.

5 If the Designating Party timely seeks a protective order, the Party served with the subpoena
6 or court order shall not produce any information designated in this action as “CONFIDENTIAL”
7 or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
8 CONFIDENTIAL – SOURCE CODE” before a determination by the court from which the
9 subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The
10 Designating Party shall bear the burden and expense of seeking protection in that court of its
11 confidential material – and nothing in these provisions should be construed as authorizing or
12 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

13 **10. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN**
14 **THIS LITIGATION**

15 (a) The terms of this Order are applicable to information produced by a Non-Party in
16 this action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
17 ATTORNEYS’ EYES ONLY”. Such information produced by Non-Parties in connection with
18 this litigation is protected by the remedies and relief provided by this Order. Nothing in these
19 provisions should be construed as prohibiting a Non-Party from seeking additional protections.

20 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
21 Party’s confidential information in its possession, and the Party is subject to an agreement with the
22 Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

23 (1) promptly notify in writing the Requesting Party and the Non-Party that some or
24 all of the information requested is subject to a confidentiality agreement with a Non-Party;

25 (2) promptly provide the Non-Party with a copy of the Stipulated Protective Order
26 in this litigation, the relevant discovery request(s), and a reasonably specific description of the
27 information requested; and

28 (3) make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

11. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

12. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Section 15. This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

13. MISCELLANEOUS

13.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

1 13.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
2 Order no Party waives any right it otherwise would have to object to disclosing or producing any
3 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,
4 no Party waives any right to object on any ground to use in evidence of any of the material covered
5 by this Protective Order.

6 13.3 Filing Protected Material. Without written permission from the Designating Party
7 or a court order secured after appropriate notice to all interested persons, a Party may not file in
8 the public record in this action any Protected Material. A Party that seeks to file under seal any
9 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
10 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
11 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request establishing
12 that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled
13 to protection under the law. If a Receiving Party's request to file Protected Material under seal
14 pursuant to Civil Local Rule 79-5 is denied by the court, then the Receiving Party may file the
15 information, including the Protected Material, in the public record pursuant to Civil Local Rule
16 79-5 unless otherwise instructed by the court.

17 **14. FINAL DISPOSITION**

18 Within 60 days after the final disposition of this action, as defined in Section 4, each
19 Receiving Party, in its discretion, must return all Protected Material to the Producing Party or
20 destroy such material. As used in this subdivision, "all Protected Material" includes all copies,
21 abstracts, compilations, summaries, and any other format reproducing or capturing any of the
22 Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party
23 must submit a written certification to the Producing Party (and, if not the same person or entity, to
24 the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate)
25 all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party
26 has not retained any copies, abstracts, compilations, summaries or any other format reproducing
27 or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled
28 to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,

1 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
 2 product, and consultant and expert work product, even if such materials contain Protected Material.
 3 Any such archival copies that contain or constitute Protected Material remain subject to this
 4 Protective Order as set forth in Section 4 (DURATION).

5 **15. CLAWBACK & RULE 502(D) ORDER**

6 (a) Non-Waiver. Pursuant to Federal Rule of Evidence 502(d), the production of any
 7 material or information shall not be deemed to waive the attorney-client privilege, the work-
 8 product doctrine, the common interest or joint defense privilege, or any other applicable privilege
 9 or immunity in the Litigation or in any other federal or state proceeding. Nothing in this Section 15
 10 is intended to or shall serve to limit a Party's right to conduct a review of any material or
 11 information for relevance, responsiveness, and/or segregation of privileged and/or protected
 12 information before production. The Parties stipulate that this Order operates as a Rule 502(d)
 13 Order, which shall be interpreted to provide the maximum protection allowed by Rule 502(d).

14 (b) Assertion of a Clawback. Any Party or non-Party may request the return of any
 15 produced material or information on the grounds of the attorney-client privilege, the work-product
 16 doctrine, the common interest or joint defense privilege, or any other applicable privilege or
 17 immunity by identifying it, stating the basis for withholding such material or information from
 18 production, and providing any other information that would be listed on a supplemental privilege
 19 log.

20 (c) Document Used in Proceedings: Notwithstanding the foregoing, the Parties agree that
 21 any document used by any Party in a deposition, expert report, or court filing in this action (with
 22 the exception of a motion to determine the existence of any privilege) shall not be subject to the
 23 procedures described in subsections (a) and (b) of this Section if the producing Party does not claw
 24 back that document pursuant to this Protective Order within 14 calendar days of its use. For a
 25 document used by a Party in a deposition, expert report, or court filing in this action that is clawed
 26 back after 14 calendar days of its use, Rule 502 shall govern the Producing Party's request to claw
 27 back the document.

28 (d) Clawback Process: Federal Rule of Civil Procedure 26(b)(5)(B) shall govern the

1 clawback of produced documents or information on the grounds of privilege or work product
 2 protection. If a Party or non-Party requests the return of produced material or information then in
 3 the custody of one or more Parties, the possessing Parties shall within 7 business days:

4 1. Destroy or return to the requesting Party or non-Party the produced material or
 5 information and all copies thereof, and expunge from any other document or material information
 6 derived solely from the produced material or information; or

7 2. Notify the producing Party or non-Party that it wishes to challenge the claim of
 8 privilege or work product protection and has sequestered the material until the issue can be
 9 resolved. The Parties agree to meet and confer regarding the claim of the attorney-client privilege,
 10 the work-product doctrine, the common interest or joint defense privilege, or any other applicable
 11 privilege or immunity. If, at the conclusion of the meet and confer process, the Parties are not in
 12 agreement, they may bring the issue to the Court. A Party challenging a clawback request under
 13 this Section 14 may use the content of the clawed-back document for the sole purpose of
 14 challenging the claim of the attorney-client privilege, the work-product doctrine, the common
 15 interest or joint defense privilege, or any other applicable privilege or immunity. If filing a motion
 16 with the Court, the Party challenging the clawback request must file the clawed-back document
 17 under seal, consistent with Local Rule 79-5.

18 (e) Implementation of a Clawback: Where a Party agrees to or is ordered to destroy a
 19 clawed back document, the Party must instruct their e-discovery vendor to delete the document
 20 entirely from their e-discovery database and delete or return other copies of the clawed back
 21 document.

22 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

23 DATED: April 16, 2025

FENWICK & WEST LLP

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED:

By: The Honorable Jacqueline Scott Corley
United States District Judge

Local Rule 5(i)(3) Attestation

I attest that each of the other signatories of this document have concurred in the filing of the document.

Dated: April 16, 2025

FENWICK & WEST LLP

By: /s/ Tyler G. Newby
Tyler G. Newby

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of perjury
 that I have read in its entirety and understand the Stipulated Protective Order that was issued by
 the United States District Court for the Northern District of California on [date] in the case of
Tekion Corp. v. CDK Global, LLC, 3:24-cv-08879-JSC or ***CDK Global, LLC v. Tekion Corp., 3:25-cv-1394-JSC***. I agree to comply with and to be bound by all the terms of this Stipulated
 Protective Order and I understand and acknowledge that failure to so comply could expose me to
 sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in
 any manner any information or item that is subject to this Stipulated Protective Order to any person
 or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective
 Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of
 _____ [print or type full address and telephone number]
 as my California agent for service of process in connection with this action or any proceedings
 related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____